

REFERENCE TITLE: public-private partnerships in transportation

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

## **SB 1498**

Introduced by  
Senators Gorman: Blendu, Harper

AN ACT

REPEALING TITLE 28, CHAPTER 22, ARIZONA REVISED STATUTES; AMENDING TITLE 28, ARIZONA REVISED STATUTES, BY ADDING A NEW CHAPTER 22; AMENDING SECTIONS 35-701, 42-5069 AND 42-6208, ARIZONA REVISED STATUTES; RELATING TO PUBLIC-PRIVATE PARTNERSHIPS IN TRANSPORTATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Repeal

3 Title 28, chapter 22, Arizona Revised Statutes, is repealed.

4 Sec. 2. Title 28, Arizona Revised Statutes, is amended by adding a new  
5 chapter 22, to read:

6 CHAPTER 22

7 PUBLIC-PRIVATE PARTNERSHIPS IN TRANSPORTATION

8 ARTICLE 1. GENERAL PROVISIONS

9 28-7701. Definitions

10 IN THIS CHAPTER UNLESS THE CONTEXT OTHERWISE REQUIRES:

11 1. "CONCESSION" MEANS ANY LEASE, GROUND LEASE, FRANCHISE, EASEMENT,  
12 PERMIT OR OTHER BINDING AGREEMENT TRANSFERRING RIGHTS FOR THE USE OR CONTROL,  
13 IN WHOLE OR IN PART, OF AN ELIGIBLE FACILITY BY THE DEPARTMENT OR OTHER UNIT  
14 OF GOVERNMENT TO A PRIVATE PARTNER IN ACCORDANCE WITH THIS CHAPTER.

15 2. "ELIGIBLE FACILITY" MEANS ANY FACILITY DEVELOPED, OPERATED OR HELD  
16 IN ACCORDANCE WITH THIS CHAPTER, INCLUDING ANY EXISTING, ENHANCED, UPGRADED  
17 OR NEW FACILITY USED OR USEFUL FOR THE SAFE TRANSPORT OF PEOPLE OR GOODS VIA  
18 ONE OR MORE MODES OF TRANSPORT, WHETHER INVOLVING HIGHWAYS, RAILWAYS,  
19 MONORAILS, TRANSIT, BUS SYSTEMS, GUIDED RAPID TRANSIT, FIXED GUIDEWAYS,  
20 FERRIES, BOATS, VESSELS, INTERMODAL OR MULTIMODAL SYSTEMS OR ANY OTHER MODE  
21 OF TRANSPORT, AS WELL AS FACILITIES, STRUCTURES, PARKING, RAIL YARDS OR  
22 STORAGE FACILITIES, VEHICLES, ROLLING STOCK OR OTHER RELATED EQUIPMENT, ITEMS  
23 OR PROPERTY.

24 3. "PRIVATE PARTNER" MEANS A PERSON, ENTITY OR ORGANIZATION THAT IS  
25 NOT THE FEDERAL GOVERNMENT, A STATE, A POLITICAL SUBDIVISION OF A STATE OR A  
26 UNIT OF GOVERNMENT.

27 4. "UNIT OF GOVERNMENT" MEANS ANY DEPARTMENT OR AGENCY OF THIS STATE  
28 OR AGENCY, OFFICE OR DEPARTMENT OF A STATE, CITY, COUNTY, DISTRICT,  
29 COMMISSION, AUTHORITY, ENTITY, PORT OR OTHER PUBLIC CORPORATION ORGANIZED AND  
30 EXISTING UNDER STATUTORY LAW OR UNDER A VOTER APPROVED CHARTER OR INITIATIVE,  
31 AND ANY INTERGOVERNMENTAL ENTITY.

32 28-7702. Rules and guidelines

33 THE DEPARTMENT SHALL ADOPT SUCH RULES OR GUIDELINES AS IT DETERMINES  
34 NECESSARY TO CARRY OUT THIS CHAPTER.

35 28-7703. Project delivery methods

36 THE DEPARTMENT MAY PROVIDE FOR THE DEVELOPMENT OR OPERATION OF ELIGIBLE  
37 FACILITIES USING A VARIETY OF PROJECT DELIVERY METHODS AND FORMS OF  
38 AGREEMENT. THE METHODS MAY INCLUDE A WIDE RANGE OF POSSIBILITIES, INCLUDING:

39 1. PRE-DEVELOPMENT AGREEMENTS LEADING TO OTHER IMPLEMENTING  
40 AGREEMENTS.

41 2. A DESIGN-BUILD AGREEMENT.

42 3. A DESIGN-BUILD-MAINTAIN AGREEMENT.

43 4. A DESIGN-BUILD-FINANCE-OPERATE AGREEMENT.

44 5. A DESIGN-BUILD-OPERATE-MAINTAIN AGREEMENT.

1           6. A CONCESSION PROVIDING FOR THE PRIVATE PARTNER TO DESIGN, BUILD,  
2 OPERATE, MAINTAIN, MANAGE OR LEASE AN EXISTING, ENHANCED, UPGRADED OR NEW  
3 FACILITY.

4           7. ANY OTHER PROJECT DELIVERY METHOD OR AGREEMENT OR COMBINATION OF  
5 METHODS OR AGREEMENTS THAT THE DEPARTMENT DETERMINES WILL SERVE THE PUBLIC  
6 INTEREST.

7           28-7704. Procurements

8           A. THE DEPARTMENT MAY PROCURE SERVICES UNDER THIS CHAPTER USING ANY OF  
9 THE FOLLOWING:

10           1. CALLS FOR PROJECT PROPOSALS IN WHICH THE DEPARTMENT DESCRIBES A  
11 CLASS OF TRANSPORTATION FACILITIES OR A GEOGRAPHIC AREA IN WHICH PRIVATE  
12 ENTITIES ARE INVITED TO SUBMIT PROPOSALS TO DEVELOP TRANSPORTATION  
13 FACILITIES.

14           2. SOLICITATIONS USING REQUESTS FOR QUALIFICATIONS, SHORT-LISTING OF  
15 QUALIFIED PROPOSERS, REQUESTS FOR PROPOSALS, NEGOTIATIONS, BEST AND FINAL  
16 OFFERS OR OTHER PROCUREMENT PROCEDURES.

17           3. UNSOLICITED PROPOSALS IF THE DEPARTMENT DETERMINES THAT THERE IS  
18 SUFFICIENT MERIT TO PURSUE ANY UNSOLICITED PROPOSAL AND A REASONABLE  
19 OPPORTUNITY FOR OTHER ENTITIES TO SUBMIT COMPETING PROPOSALS FOR  
20 CONSIDERATION AND A POSSIBLE CONTRACT AWARD IF PROVIDED.

21           4. PROCUREMENTS SEEKING FROM THE PRIVATE SECTOR DEVELOPMENT AND  
22 FINANCE PLANS MOST SUITABLE FOR THE PROJECT.

23           5. BEST VALUE SELECTION PROCUREMENTS BASED ON PRICE OR FINANCIAL  
24 PROPOSALS, OR BOTH, OR OTHER FACTORS.

25           6. OTHER PROCEDURES THAT THE DEPARTMENT DETERMINES MAY FURTHER THE  
26 IMPLEMENTATION OF THIS CHAPTER.

27           B. FOR ANY PROCUREMENT IN WHICH THE DEPARTMENT ISSUES A REQUEST FOR  
28 QUALIFICATIONS, REQUEST FOR PROPOSALS OR SIMILAR SOLICITATION DOCUMENT, THE  
29 REQUEST SHALL GENERALLY SET FORTH THE FACTORS THAT WILL BE EVALUATED AND THE  
30 MANNER IN WHICH RESPONSES WILL BE EVALUATED.

31           C. IN EVALUATING PROPOSALS, THE DEPARTMENT MAY ACCORD SUCH RELATIVE  
32 WEIGHT TO FACTORS SUCH AS COST, FINANCIAL COMMITMENT, INNOVATIVE FINANCING,  
33 TECHNICAL, SCIENTIFIC, TECHNOLOGICAL OR SOCIO-ECONOMIC MERIT AND OTHER  
34 FACTORS AS THE DEPARTMENT DEEMS APPROPRIATE TO OBTAIN THE BEST VALUE FOR THIS  
35 STATE.

36           D. THE DEPARTMENT MAY PAY A STIPEND TO A PROPOSER BASED ON THE  
37 DEPARTMENT'S ESTIMATE, IN ITS SOLE DISCRETION, OF THE VALUE OF THE WORK  
38 PRODUCT RECEIVED, BUT ONLY IF THE DEPARTMENT HAS DETERMINED THAT THE PROPOSAL  
39 SUBMITTED WAS RESPONSIVE TO THE DEPARTMENT'S REQUEST FOR PROPOSALS AND MET  
40 ALL REQUIREMENTS ESTABLISHED BY THE DEPARTMENT FOR THE PROJECT. IN EXCHANGE  
41 FOR THE STIPEND, THE DEPARTMENT MAY REQUIRE THE RECIPIENT TO GRANT TO THE  
42 DEPARTMENT THE RIGHT TO USE ANY WORK PRODUCT CONTAINED IN THE RECIPIENT'S  
43 PROPOSAL, INCLUDING TECHNOLOGIES, TECHNIQUES, METHODS, PROCESSES AND  
44 INFORMATION CONTAINED IN THE RECIPIENT'S PROJECT DESIGN.

1 E. THE DEPARTMENT MAY CHARGE A REASONABLE ADMINISTRATIVE FEE FOR THE  
2 EVALUATION OF AN UNSOLICITED PROJECT PROPOSAL.

3 F. THE DEPARTMENT MAY PROCURE SERVICES, AWARD AGREEMENTS AND  
4 ADMINISTER REVENUES AS AUTHORIZED IN THIS SECTION NOTWITHSTANDING ANY  
5 REQUIREMENTS OF ANY OTHER STATE OR LOCAL STATUTE, REGULATION OR LAW RELATING  
6 TO PUBLIC BIDDING OR OTHER PROCUREMENT PROCEDURES OR OTHER PROVISIONS  
7 OTHERWISE APPLICABLE TO PUBLIC WORKS, SERVICES OR UTILITIES.

8 G. THE DEPARTMENT MAY RETAIN FINANCIAL, LEGAL AND OTHER CONSULTANTS  
9 AND EXPERTS INSIDE AND OUTSIDE THE PUBLIC SECTOR TO ASSIST IN THE EVALUATION,  
10 NEGOTIATION AND DEVELOPMENT OF ELIGIBLE FACILITIES UNDER THIS CHAPTER.

11 H. THE DEPARTMENT MAY SPEND MONIES THAT ARE REASONABLY NECESSARY FOR  
12 THE DEVELOPMENT OF PROCUREMENTS, EVALUATION OF CONCEPTS OR PROPOSALS,  
13 NEGOTIATION OF AGREEMENTS AND IMPLEMENTATION OF AGREEMENTS FOR DEVELOPMENT OR  
14 OPERATION OF ELIGIBLE FACILITIES UNDER THIS CHAPTER.

15 28-7705. Public-private partnership agreements

16 A. IN ANY PUBLIC-PRIVATE PARTNERSHIP OR OTHER AGREEMENT FOR ANY  
17 ELIGIBLE FACILITY UNDER THIS CHAPTER, THE DEPARTMENT MAY INCLUDE PROVISIONS  
18 THAT:

19 1. AUTHORIZE THE PRIVATE PARTNER TO COLLECT USER FEES, TOLLS, FARES OR  
20 SIMILAR CHARGES, INCLUDING PROVISIONS THAT:

21 (a) SPECIFY TECHNOLOGY TO BE USED IN THE FACILITY.

22 (b) ESTABLISH CIRCUMSTANCES UNDER WHICH THE DEPARTMENT MAY RECEIVE A  
23 SHARE OF REVENUES FROM SUCH CHARGES.

24 (c) GOVERN ENFORCEMENT OF TOLLS, INCLUDING PROVISIONS FOR USE OF  
25 CAMERAS OR OTHER MECHANISMS TO ENSURE THAT USERS HAVE PAID TOLLS THAT ARE DUE  
26 AND PROVISIONS THAT ALLOW THE PRIVATE PARTNER ACCESS TO RELEVANT DATABASES  
27 FOR ENFORCEMENT PURPOSES.

28 2. ALLOW FOR PAYMENTS TO BE MADE BY THIS STATE TO THE PRIVATE PARTNER,  
29 INCLUDING AVAILABILITY PAYMENTS OR PERFORMANCE BASED PAYMENTS.

30 3. ALLOW THE DEPARTMENT TO ACCEPT PAYMENTS OF MONIES AND SHARE  
31 REVENUES WITH THE PRIVATE PARTNER.

32 4. ADDRESS HOW THE PARTNERS WILL SHARE MANAGEMENT OF THE RISKS OF THE  
33 PROJECT.

34 5. SPECIFY HOW THE PARTNERS WILL SHARE THE COSTS OF DEVELOPMENT OF THE  
35 PROJECT.

36 6. ALLOCATE FINANCIAL RESPONSIBILITY FOR COST OVERRUNS.

37 7. ESTABLISH THE DAMAGES TO BE ASSESSED FOR NONPERFORMANCE.

38 8. ESTABLISH PERFORMANCE CRITERIA OR INCENTIVES, OR BOTH.

39 9. ADDRESS THE ACQUISITION OF RIGHTS-OF-WAY AND OTHER PROPERTY  
40 INTERESTS THAT MAY BE REQUIRED, INCLUDING PROVISIONS THAT ADDRESS THE  
41 EXERCISE OF EMINENT DOMAIN AS PROVIDED IN SECTION 28-7709.

42 10. ESTABLISH RECORD KEEPING, ACCOUNTING AND AUDITING STANDARDS TO BE  
43 USED FOR THE PROJECT.

44 11. FOR A PROJECT THAT REVERTS TO PUBLIC OWNERSHIP, ADDRESS  
45 RESPONSIBILITY FOR RECONSTRUCTION OR RENOVATIONS THAT ARE REQUIRED IN ORDER

1 FOR A FACILITY TO MEET ALL APPLICABLE GOVERNMENT STANDARDS ON REVERSION OF  
2 THE FACILITY TO THIS STATE;

3 12. PROVIDE FOR PATROLLING AND LAW ENFORCEMENT ON PUBLIC FACILITIES.

4 13. IDENTIFY ANY DEPARTMENT SPECIFICATIONS THAT MUST BE SATISFIED,  
5 INCLUDING PROVISIONS ALLOWING THE PRIVATE PARTNER TO REQUEST AND RECEIVE  
6 AUTHORIZATION TO DEVIATE FROM THE SPECIFICATIONS ON MAKING A SHOWING  
7 SATISFACTORY TO THE DEPARTMENT.

8 14. REQUIRE A PRIVATE PARTNER TO PROVIDE PERFORMANCE AND PAYMENT  
9 BONDS, PARENT COMPANY GUARANTEES, LETTERS OF CREDIT OR OTHER ACCEPTABLE FORM  
10 OF SECURITY OR A COMBINATION OF ANY OF THESE, THE PENAL SUM OR AMOUNT OF  
11 WHICH MAY BE LESS THAN ONE HUNDRED PER CENT OF THE VALUE OF THE CONTRACT  
12 INVOLVED BASED ON THE DEPARTMENT'S DETERMINATION, MADE ON A FACILITY-BY-  
13 FACILITY BASIS, OF WHAT IS REQUIRED TO ADEQUATELY PROTECT THIS STATE.

14 15. AUTHORIZE THE PRIVATE PARTNER IN ANY CONCESSION AGREEMENT TO  
15 COLLECT USER FEES, TOLLS, FARES OR SIMILAR CHARGES TO COVER ITS COSTS AND  
16 PROVIDE FOR A REASONABLE RATE OF RETURN ON THE PRIVATE PARTNER'S INVESTMENT,  
17 INCLUDING PROVISIONS SUCH AS THE FOLLOWING:

18 (a) THE CHARGES MAY BE COLLECTED DIRECTLY BY THE PRIVATE PARTNER OR BY  
19 A THIRD PARTY ENGAGED FOR THAT PURPOSE.

20 (b) A FORMULA FOR THE ADJUSTMENT OF USER FEES, TOLLS, FARES OR SIMILAR  
21 CHARGES DURING THE TERM OF THE AGREEMENT.

22 (c) FOR AN AGREEMENT THAT DOES NOT INCLUDE A FORMULA DESCRIBED IN  
23 SUBDIVISION (b) OF THIS PARAGRAPH, PROVISIONS REGULATING THE PRIVATE  
24 PARTNER'S RETURN ON INVESTMENT.

25 (d) A VARIETY OF TRAFFIC MANAGEMENT STRATEGIES, INCLUDING:

26 (i) GENERAL PURPOSE TOLL LANES.

27 (ii) HIGH OCCUPANCY VEHICLE LANES WHERE SINGLE OR LOW OCCUPANCY  
28 VEHICLES MAY USE HIGHER OCCUPANCY VEHICLE LANES BY PAYING A TOLL.

29 (iii) LANES OR FACILITIES IN WHICH THE TOLLS MAY VARY DURING THE  
30 COURSE OF THE DAY OR WEEK OR ACCORDING TO LEVELS OF CONGESTION ANTICIPATED OR  
31 EXPERIENCED.

32 (iv) COMBINATIONS OF, OR VARIATIONS ON, ITEMS (i), (ii) AND (iii), OR  
33 OTHER STRATEGIES THE DEPARTMENT DETERMINES ARE APPROPRIATE ON A  
34 FACILITY-BY-FACILITY BASIS.

35 16. SPECIFY REMEDIES AVAILABLE AND DISPUTE RESOLUTION PROCEDURES,  
36 INCLUDING THE RIGHT OF THE PRIVATE PARTNER TO INSTITUTE LEGAL PROCEEDINGS TO  
37 OBTAIN AN ENFORCEABLE JUDGMENT OR AWARD AGAINST THE DEPARTMENT IN THE EVENT  
38 OF A DEFAULT BY THE DEPARTMENT AND PROCEDURES FOR USE OF DISPUTE REVIEW  
39 BOARDS, MEDIATION, FACILITATED NEGOTIATION, ARBITRATION AND OTHER ALTERNATIVE  
40 DISPUTE RESOLUTION PROCEDURES.

41 B. NOTWITHSTANDING ANY OTHER LAW, THE DEPARTMENT MAY ENTER INTO  
42 AGREEMENTS, WHETHER A CONCESSION AGREEMENT OR OTHER FORM OF AGREEMENT, WITH  
43 ANY PRIVATE PARTNER THAT INCLUDES PROVISIONS DESCRIBED IN SUBSECTION A OF  
44 THIS SECTION. AGREEMENTS MAY BE FOR A TERM NOT TO EXCEED FIFTY YEARS BUT MAY  
45 BE EXTENDED FOR ADDITIONAL TERMS.

1 C. THE DEPARTMENT MAY APPROVE ANY REQUEST FROM ANOTHER UNIT OF  
2 GOVERNMENT TO DEVELOP AN ELIGIBLE FACILITY IN A MANNER SIMILAR TO THAT USED  
3 BY THE DEPARTMENT UNDER THIS CHAPTER.

4 D. NOTWITHSTANDING ANY OTHER LAW, AGREEMENTS UNDER THIS CHAPTER THAT  
5 ARE PROPERLY DEVELOPED, OPERATED OR HELD BY A PRIVATE PARTNER UNDER A  
6 CONCESSION AGREEMENT PURSUANT TO THIS CHAPTER ARE EXEMPT FROM ALL STATE AND  
7 LOCAL AD VALOREM AND PROPERTY TAXES THAT OTHERWISE MIGHT BE APPLICABLE.

8 E. THE AGREEMENT SHALL CONTAIN A PROVISION BY WHICH THE PRIVATE  
9 PARTNER EXPRESSLY AGREES THAT IT IS BE BARRED FROM SEEKING INJUNCTIVE OR  
10 OTHER EQUITABLE RELIEF TO DELAY, PREVENT OR OTHERWISE HINDER THE DEPARTMENT  
11 FROM DEVELOPING OR CONSTRUCTING ANY FACILITY THAT WAS UNPLANNED AS OF THE  
12 TIME THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT WAS EXECUTED AND THAT WOULD OR  
13 MIGHT IMPACT THE REVENUE THAT THE PRIVATE PARTNER WOULD OR MIGHT DERIVE FROM  
14 THE FACILITY DEVELOPED UNDER THE AGREEMENT, EXCEPT THAT THE AGREEMENT MAY  
15 PROVIDE FOR REASONABLE COMPENSATION TO THE PRIVATE PARTNER FOR THE ADVERSE  
16 EFFECT ON TOLL REVENUES OR OTHER USER FEE REVENUES RESULTING FROM DEVELOPMENT  
17 AND CONSTRUCTION OF AN UNPLANNED REVENUE IMPACTING FACILITY.

18 28-7706. Funding and financing

19 A. ANY LAWFUL SOURCE OF FUNDING MAY BE USED FOR THE DEVELOPMENT OR  
20 OPERATION OF AN ELIGIBLE FACILITY UNDER THIS CHAPTER, INCLUDING:

21 1. THE PROCEEDS OF GRANT ANTICIPATION REVENUE BONDS AUTHORIZED BY 23  
22 UNITED STATES CODE SECTION 122 OR ANY OTHER APPLICABLE FEDERAL OR STATE LAW.

23 2. GRANTS, LOANS, LOAN GUARANTEES, LINES OF CREDIT, REVOLVING LINES OF  
24 CREDIT OR OTHER ARRANGEMENTS AVAILABLE UNDER THE TRANSPORTATION  
25 INFRASTRUCTURE FINANCE AND INNOVATION ACT (P.L. 105-178; 112 STAT, 241; 23  
26 UNITED STATES CODE, SECTIONS 601 THROUGH 610) OR ANY OTHER FEDERAL OR STATE  
27 LAW.

28 3. FEDERAL, STATE OR LOCAL REVENUES.

29 4. USER FEES, TOLLS, FARES, CHARGES, LEASE PROCEEDS, RENTS,  
30 AVAILABILITY PAYMENTS, GROSS OR NET RECEIPTS FROM SALES, PROCEEDS FROM THE  
31 SALE OF DEVELOPMENT RIGHTS, FRANCHISE FEES, PERMIT FEES OR ANY OTHER LAWFUL  
32 FORM OF CONSIDERATION.

33 5. PRIVATE ACTIVITY BONDS AS DESCRIBED BY 26 UNITED STATES CODE  
34 SECTION 141 AND OTHER FORMS OF PRIVATE CAPITAL.

35 6. OTHER FORMS OF PUBLIC AND PRIVATE CAPITAL THAT ARE AVAILABLE.

36 B. AS SECURITY FOR THE PAYMENT OF FINANCING DESCRIBED IN THIS SECTION,  
37 THE REVENUES FROM THE PROJECT MAY BE PLEDGED BUT NO PLEDGE OF REVENUES  
38 CONSTITUTES IN ANY MANNER OR TO ANY EXTENT A GENERAL OBLIGATION OF THIS  
39 STATE. ANY FINANCING MAY BE STRUCTURED ON A SENIOR, PARITY OR SUBORDINATE  
40 BASIS TO ANY OTHER FINANCING.

41 C. THE DEPARTMENT MAY ISSUE TOLL REVENUE BONDS TO PROVIDE MONIES FOR  
42 ANY PROJECT UNDER THIS CHAPTER.

43 D. THE DEPARTMENT MAY ACCEPT FROM THE UNITED STATES OR ANY OF ITS  
44 AGENCIES MONIES THAT ARE AVAILABLE TO THIS STATE OR TO ANY OTHER UNIT OF  
45 GOVERNMENT FOR CARRYING OUT THE PURPOSES OF THIS CHAPTER, WHETHER THE MONIES

1 ARE MADE AVAILABLE BY GRANT, LOAN OR OTHER FINANCING ARRANGEMENT. THE  
2 DEPARTMENT MAY ENTER INTO AGREEMENTS AND OTHER ARRANGEMENTS WITH THE UNITED  
3 STATES OR ANY OF ITS AGENCIES AS MAY BE NECESSARY, PROPER AND CONVENIENT FOR  
4 CARRYING OUT OF THIS CHAPTER.

5 E. THE DEPARTMENT MAY ACCEPT FROM ANY SOURCE ANY GRANT, DONATION, GIFT  
6 OR OTHER FORM OF CONVEYANCE OF LAND, MONEY, OTHER REAL OR PERSONAL PROPERTY  
7 OR OTHER VALUABLE THING MADE TO THIS STATE, THE DEPARTMENT OR A LOCAL  
8 GOVERNMENT FOR CARRYING OUT THIS CHAPTER.

9 F. ANY ELIGIBLE FACILITY MAY BE FUNDED IN WHOLE OR IN PART BY  
10 CONTRIBUTION OF ANY MONIES OR PROPERTY MADE BY ANY PRIVATE ENTITY OR PUBLIC  
11 SECTOR PARTNER THAT IS A PARTY TO ANY AGREEMENT ENTERED INTO UNDER THIS  
12 CHAPTER.

13 G. NOTWITHSTANDING ANY OTHER LAW, FEDERAL, STATE AND LOCAL MONIES MAY  
14 BE COMBINED WITH ANY PRIVATE SECTOR FUNDS FOR ANY PROJECT PURPOSES.

15 28-7707. Confidentiality and public disclosure

16 A. A PROPOSER SHALL IDENTIFY THOSE PORTIONS OF A PROPOSAL OR OTHER  
17 SUBMISSION THAT THE PROPOSER CONSIDERS TO BE TRADE SECRETS OR CONFIDENTIAL  
18 COMMERCIAL, FINANCIAL OR PROPRIETARY INFORMATION. IN ORDER FOR CONFIDENTIAL  
19 AND PROPRIETARY INFORMATION AND TRADE SECRETS TO BE EXEMPT FROM DISCLOSURE,  
20 THE PRIVATE ENTITY MUST DO ALL OF THE FOLLOWING:

21 1. INVOKE EXCLUSION ON SUBMISSION OF THE INFORMATION OR OTHER  
22 MATERIALS FOR WHICH PROTECTION IS SOUGHT.

23 2. IDENTIFY THE DATA OR OTHER MATERIALS FOR WHICH PROTECTION IS SOUGHT  
24 WITH CONSPICUOUS LABELING.

25 3. STATE THE REASONS WHY PROTECTION IS NECESSARY.

26 4. FULLY COMPLY WITH ANY APPLICABLE PROVISIONS OF STATE LAW WITH  
27 RESPECT TO INFORMATION THAT THE PROPOSER CONTENDS SHOULD BE EXEMPT FROM  
28 DISCLOSURE.

29 B. EACH REQUEST FOR PROPOSALS ISSUED PURSUANT TO THIS CHAPTER SHALL  
30 REQUIRE EACH PROPOSER TO INCLUDE WITH ITS PROPOSAL AN EXECUTIVE SUMMARY  
31 COVERING THE MAJOR ELEMENTS OF ITS PROPOSAL THAT DO NOT ADDRESS THE  
32 PROPOSER'S PRICE, FINANCING PLAN OR OTHER CONFIDENTIAL OR PROPRIETARY  
33 INFORMATION OR TRADE SECRETS THAT THE PROPOSER INTENDS TO BE EXEMPT FROM  
34 DISCLOSURE. SUCH EXECUTIVE SUMMARY SHALL BE SUBJECT TO RELEASE AND DISCLOSURE  
35 TO THE PUBLIC AT ANY TIME. NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR  
36 LOCAL LAW, IN ORDER TO MAXIMIZE COMPETITION UNDER THIS CHAPTER, NO PART OF A  
37 PROPOSAL OTHER THAN THE EXECUTIVE SUMMARY SHALL BE SUBJECT TO RELEASE OR  
38 DISCLOSURE BY THE DEPARTMENT BEFORE AWARD OF THE PUBLIC-PRIVATE PARTNERSHIP  
39 CONTRACT AND THE CONCLUSION OF ANY PROTEST OR OTHER CHALLENGE TO SUCH AWARD,  
40 ABSENT AN ADMINISTRATIVE OR JUDICIAL ORDER REQUIRING RELEASE OR DISCLOSURE.  
41 FOLLOWING THE AWARD OF THE CONTRACT AND THE CONCLUSION OF ANY PROTEST OR  
42 OTHER CHALLENGE TO THE AWARD, TITLE 39 APPLIES TO ANY RELEASE OF ANY PART OF  
43 THE PROPOSAL.

1           28-7708. Government agreements

2           EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER PUBLIC SECTOR  
3 PARTNER, THIS STATE MAY ENTER INTO WORKING AGREEMENTS, COORDINATION  
4 AGREEMENTS, OR SIMILAR IMPLEMENTATION AGREEMENTS, INCLUDING THE FORMATION OF  
5 MULTISTATE TRANSPORTATION ORGANIZATIONS, TO CARRY OUT THE JOINT  
6 IMPLEMENTATION OF A TRANSPORTATION PROJECT UNDER THIS CHAPTER.

7           28-7709. Eminent domain

8           THIS STATE MAY EXERCISE THE POWER OF EMINENT DOMAIN TO ACQUIRE  
9 PROPERTY, RIGHTS-OF-WAY OR OTHER RIGHTS IN PROPERTY FOR PROJECTS THAT ARE  
10 NECESSARY TO DEVELOP, OPERATE OR HOLD AN ELIGIBLE FACILITY UNDER THIS  
11 CHAPTER, REGARDLESS OF WHETHER THE PROPERTY WILL BE OWNED IN FEE SIMPLE BY  
12 THIS STATE OR WHETHER THE PROPERTY WILL BE LEASED TO THE PRIVATE PARTNER TO  
13 USE, LEASE OR OPERATE FOR ITS BUSINESS PURPOSES IN CONNECTION WITH THE  
14 PUBLIC-PRIVATE PARTNERSHIP PROJECT.

15          28-7710. Federal laws and severability

16          A. IF NO FEDERAL MONIES ARE USED ON AN ELIGIBLE FACILITY, THE LAWS OF  
17 THIS STATE, INCLUDING THIS CHAPTER, GOVERN. NOTWITHSTANDING ANY PROVISION OF  
18 THIS CHAPTER, IF FEDERAL MONIES ARE USED ON AN ELIGIBLE FACILITY AND  
19 APPLICABLE FEDERAL STATUTES, REGULATIONS OR LAWS CONFLICT WITH THIS CHAPTER  
20 OR REQUIRE PROVISIONS OR PROCEDURES INCONSISTENT WITH THIS CHAPTER, THE  
21 APPLICABLE FEDERAL STATUTES, REGULATIONS OR LAWS GOVERN.

22          B. IF ANY PROVISION OF THIS CHAPTER OR ITS APPLICATION TO ANY PERSON  
23 OR CIRCUMSTANCE IS HELD INVALID, THE REMAINDER OF THE CHAPTER OR THE  
24 APPLICATION OF THE PROVISION TO OTHER PERSONS OR CIRCUMSTANCES IS NOT  
25 AFFECTED.

26          Sec. 3. Section 35-701, Arizona Revised Statutes, is amended to read:

27          35-701. Definitions

28          In this chapter, unless the context otherwise requires:

29          1. "Corporation" means any corporation organized as an authority as  
30 provided in this chapter.

31          2. "Designated area" means any area of this state which is either  
32 designated pursuant to section 36-1479 as a slum or blighted area as defined  
33 in section 36-1471, designated by regulation as a pocket of poverty or a  
34 neighborhood strategy area by the United States department of housing and  
35 urban development pursuant to title I of the housing and community  
36 development act of 1977 (P.L. 95-128; 42 United States Code sections 5301  
37 through 5320), as amended, and the department of housing and urban  
38 development act (P.L. 89-174; 42 United States Code section 3535(d)) or  
39 designated by the United States department of housing and urban development  
40 as an empowerment or enterprise zone pursuant to the federal omnibus budget  
41 reconciliation act of 1993 (P.L. 103-66; 26 United States Code section  
42 1391(g)) or an area certified as an enterprise zone pursuant to section  
43 41-1524, subsection B.

1           3. "Governing body" means:

2           (a) The board or body in which the general legislative powers of the  
3 municipality or the county are vested.

4           (b) The Arizona board of regents with respect to a corporation formed  
5 with the permission of the Arizona board of regents.

6           4. "Income" means gross earnings from wages, salary, commissions,  
7 bonuses or tips from all jobs, net earnings from such person's or family's  
8 own nonfarm business, professional practice or partnership, and net earnings  
9 from such person's or family's own farm. Income includes income, other than  
10 earnings, that consists of amounts received from social security or railroad  
11 retirement, interest, dividends, veterans payments, pensions and other  
12 regular payments, public assistance or welfare payments, including aid for  
13 dependent children, old age assistance, general assistance and aid to the  
14 blind or totally disabled, but excluding separate payments for hospital or  
15 other medical care.

16           5. "Manufactured house" means a structure that is manufactured in a  
17 factory after June 15, 1976, that is delivered to a homesite in more than one  
18 section and that is placed on a permanent foundation. The dimensions of the  
19 completed house shall not be less than twenty feet by forty feet, the roof  
20 must be sloping, the siding and roofing must be the same as those found in  
21 site-built houses and the house must be eligible for thirty year real estate  
22 mortgage financing.

23           6. "Municipality" or "county" means the Arizona board of regents or  
24 any incorporated city or town, including charter cities, or any county in  
25 this state in which a corporation may be organized and in which it is  
26 contemplated the corporation will function.

27           7. "Persons of low and moderate income" means, for the purposes of  
28 financing owner-occupied single family dwelling units in areas which the  
29 municipality has found, pursuant to section 36-1479, to be slum or blighted  
30 areas, as defined in section 36-1471, persons and families whose income does  
31 not exceed two and one-half times the median family income of this state. In  
32 all other areas it means persons and families whose income does not exceed  
33 one and one-half times the median family income of this state.

34           8. "Project" means any land, any building or any other improvement and  
35 all real and personal properties, including machinery and equipment whether  
36 or not now in existence or under construction and whether located within or  
37 without this state or the municipality or county approving the formation of  
38 the corporation, that are suitable for any of the following:

39           (a) With respect to a corporation formed with the permission of a  
40 municipality or county other than the Arizona board of regents:

41           (i) Any enterprise for the manufacturing, processing or assembling of  
42 any agricultural or manufactured products.

43           (ii) Any commercial enterprise for the storing, warehousing,  
44 distributing or selling of products of agriculture, mining or industry, or of  
45 processes related thereto, including research and development.

1 (iii) Any office building or buildings for use as corporate or company  
2 headquarters or regional offices or the adaptive use for offices of any  
3 building within this state that is on the national register of historic  
4 places or rehabilitation of residential buildings located in registered  
5 historic neighborhoods.

6 (iv) A health care institution as defined in section 36-401.

7 (v) Residential real property for dwelling units located within the  
8 municipality or county approving the formation of the corporation and, in the  
9 case of a county, whether or not also within a municipality that is within  
10 the county.

11 (vi) Repairing or rehabilitating single family dwelling units or  
12 constructing or repairing residential fences and walls.

13 (vii) Convention or trade show facilities.

14 (viii) Airports, docks, wharves, mass commuting facilities, parking  
15 facilities or storage or training facilities directly related to any of the  
16 facilities as provided in this item.

17 (ix) Sewage or solid waste disposal facilities or facilities for the  
18 furnishing of electric energy, gas or water.

19 (x) Industrial park facilities.

20 (xi) Air or water pollution control facilities.

21 (xii) Any educational institution that is operated by a nonprofit  
22 educational organization that is exempt from taxation under section 501(c)(3)  
23 of the United States internal revenue code and that is not otherwise funded  
24 by state monies, any educational institution or organization that is  
25 established under title 15, chapter 1, article 8 and that is owned by a  
26 nonprofit organization, any private nonsectarian school or any private  
27 nonsectarian organization established for the purpose of funding a joint  
28 technological education school district.

29 (xiii) Research and development facilities.

30 (xiv) Commercial enterprises, including facilities for office,  
31 recreational, hotel, motel and service uses if the facilities authorized by  
32 this item are to be located in a designated area.

33 (xv) A child welfare agency, as defined in section 8-501, owned and  
34 operated by a nonprofit organization.

35 (xvi) A transportation facility constructed or operated pursuant to  
36 title 28, chapter 22, ~~article 1 or 2.~~

37 (xvii) A museum operated by a nonprofit organization.

38 (xviii) Facilities owned or operated by a nonprofit organization  
39 described in section 501(c) of the United States internal revenue code of  
40 1986.

41 (xix) New or existing correctional facilities within this state.

42 (b) With respect to a corporation formed with the permission of the  
43 Arizona board of regents, any facility consisting of classrooms, lecture  
44 halls or conference centers or any facility for research and development or  
45 for manufacturing, processing, assembling, marketing, storing and

1 transferring items developed through or connected with research and  
2 development or in which the results of such research and development are  
3 utilized, but only if the facility is located in an area designated as a  
4 research park by the Arizona board of regents.

5 9. "Property" means any land, improvements thereon, buildings and any  
6 improvements thereto, machinery and equipment of any and all kinds necessary  
7 to a project and any other personal properties deemed necessary in connection  
8 with a project.

9 10. "Research park" means an area of land that has been designated by  
10 the Arizona board of regents as a research park for a university and that, at  
11 the date of designation, is owned by this state or by the Arizona board of  
12 regents.

13 11. "Single family dwelling unit" includes any new, used or  
14 manufactured house that meets the insuring requirements of the federal  
15 housing administration, the veterans administration or any other insuring  
16 entity of the United States government or any private mortgage insurance or  
17 surety company that is approved by the federal home loan mortgage corporation  
18 or the federal national mortgage association.

19 Sec. 4. Section 42-5069, Arizona Revised Statutes, is amended to read:

20 42-5069. Commercial lease classification; definitions

21 A. The commercial lease classification is comprised of the business of  
22 leasing for a consideration the use or occupancy of real property.

23 B. A person who, as a lessor, leases or rents for a consideration  
24 under one or more leases or rental agreements the use or occupancy of real  
25 property that is used by the lessee for commercial purposes is deemed to be  
26 engaged in business and subject to the tax imposed by article 1 of this  
27 chapter, but this subsection does not include leases or rentals of real  
28 property used for residential or agricultural purposes.

29 C. The commercial lease classification does not include:

30 1. Any business activities that are classified under the transient  
31 lodging classification.

32 2. Activities engaged in by the Arizona exposition and state fair  
33 board or county fair commissions in connection with events sponsored by those  
34 entities.

35 3. Leasing real property to a lessee who subleases the property if the  
36 lessee is engaged in business classified under the commercial lease  
37 classification or the transient lodging classification.

38 4. Leasing real property pursuant to a written lease agreement entered  
39 into before December 1, 1967. This exclusion does not apply to the  
40 businesses of hotels, guest houses, dude ranches and resorts, rooming houses,  
41 apartment houses, office buildings, automobile storage garages, parking lots  
42 or tourist camps, or to the extension or renewal of any such written lease  
43 agreement.

44 5. Leasing real property by a corporation to an affiliated  
45 corporation. For the purposes of this paragraph, "affiliated corporation"

1 means a corporation that owns or controls at least eighty per cent of the  
2 lessor, that is at least eighty per cent owned or controlled by the lessor or  
3 that is at least eighty per cent owned or controlled by a corporation that  
4 also owns or controls at least eighty per cent of the lessor. Ownership and  
5 control are determined by reference to the voting shares of a corporation.

6 ~~6. Leasing real property for sublease if the tenant in possession of~~  
7 ~~the property is subject to the rental occupancy tax pursuant to article 9 of~~  
8 ~~this chapter.~~

9 ~~7.~~ 6. Leasing real property for boarding horses.

10 ~~8.~~ 7. Leasing or renting real property or the right to use real  
11 property at exhibition events in this state sponsored, operated or conducted  
12 by a nonprofit organization that is exempt from taxation under section  
13 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the  
14 organization is associated with major league baseball teams or a national  
15 touring professional golfing association and no part of the organization's  
16 net earnings inures to the benefit of any private shareholder or individual.

17 ~~9.~~ 8. Leasing or renting real property or the right to use real  
18 property for use as a rodeo featuring primarily farm and ranch animals in  
19 this state sponsored, operated or conducted by a nonprofit organization that  
20 is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6),  
21 501(c)(7) or 501(c)(8) of the internal revenue code and no part of the  
22 organization's net earnings inures to the benefit of any private shareholder  
23 or individual.

24 ~~10.~~ 9. Leasing or renting dwelling units, lodging facilities or  
25 trailer or mobile home spaces if the units, facilities or spaces are intended  
26 to serve as the principal or permanent place of residence for the lessee or  
27 renter or if the unit, facility or space is leased or rented to a single  
28 tenant thirty or more consecutive days.

29 ~~11.~~ 10. Leasing or renting real property and improvements for use  
30 primarily for religious worship by a nonprofit organization that is exempt  
31 from taxation under section 501(c)(3) of the internal revenue code and no  
32 part of the organization's net earnings inures to the benefit of any private  
33 shareholder or individual.

34 ~~12.~~ 11. Leasing or renting real property used for agricultural  
35 purposes under either of the following circumstances:

36 (a) The lease or rental is between family members, trusts, estates,  
37 corporations, partnerships, joint venturers or similar entities, or any  
38 combination thereof, if the individuals or at least eighty per cent of the  
39 beneficiaries, shareholders, partners or joint venturers share a family  
40 relationship as parents or ancestors of parents, children or descendants of  
41 children, siblings, cousins of the first degree, aunts, uncles, nieces or  
42 nephews of the first degree, spouses of any of the listed relatives and  
43 listed relatives by the half-blood or by adoption.

44 (b) The lessor leases or rents real property used for agricultural  
45 purposes under no more than three leases or rental agreements.

1       ~~13.~~ 12. Leasing, renting or granting the right to use real property to  
2 vendors or exhibitors by a trade or industry association that is a qualifying  
3 organization pursuant to section 513(d)(3)(C) of the internal revenue code  
4 for a period not to exceed twenty-one days in connection with an event that  
5 meets all of the following conditions:

6           (a) The majority of such vending or exhibition activities relate to  
7 the nature of the trade or business sponsoring the event.

8           (b) The event is held in conjunction with a formal business meeting of  
9 the trade or industry association.

10          (c) The event is organized by the persons engaged in the particular  
11 trade or industry.

12       ~~14.~~ 13. Leasing, renting or granting the right to use real property  
13 for a period not to exceed twenty-one days by a coliseum, civic center, civic  
14 plaza, convention center, auditorium or arena owned by this state or any of  
15 its political subdivisions.

16       ~~15.~~ 14. Leasing or subleasing real property used by a nursing care  
17 institution as defined in section 36-401 that is licensed pursuant to title  
18 36, chapter 4.

19       ~~16. Leasing or renting a transportation facility as provided in section~~  
20 ~~28-7705, subsections A and B.~~

21       ~~17.~~ 15. Granting or providing rights to real property that constitute  
22 a profit à prendre for the severance of minerals, including all rights to use  
23 the surface or subsurface of the property as is necessary or convenient to  
24 the right to sever the minerals. This paragraph does not exclude from the  
25 commercial lease classification leasehold rights to the real property that  
26 are granted in addition to and not included within the right of profit à  
27 prendre, but the tax base for the grant of such a leasehold right, if the  
28 gross income derived from the grant is not separately stated from the gross  
29 income derived from the grant of the profit à prendre, shall not exceed the  
30 fair market value of the leasehold rights computed after excluding the value  
31 of all rights under the profit à prendre. For the purposes of this  
32 paragraph, "profit à prendre" means a right to use the land of another to  
33 mine minerals, and carries with it the right of entry and the right to remove  
34 and take the minerals from the land and also includes the right to use the  
35 surface of the land as is necessary and convenient for exercise of the  
36 profit.

37           D. The tax base for the commercial lease classification is the gross  
38 proceeds of sales or gross income derived from the business, but  
39 reimbursements to the lessor for utility service shall be deducted from the  
40 tax base.

41           E. Notwithstanding section 42-1104, subsection B, paragraph 1,  
42 subdivision (b) and paragraph 2, the failure to file tax returns for the  
43 commercial lease classification that report gross income derived from any  
44 agreement that constitutes, in whole or in part, a grant of a right of profit

1 à prendre for the severance of minerals does not constitute an exception to  
2 the general rule for the statute of limitations.

3 F. For the purposes of this section:

4 1. "Leasing" includes renting.

5 2. "Real property" includes any improvements, rights or interest in  
6 such property.

7 Sec. 5. Section 42-6208, Arizona Revised Statutes, is amended to read:  
8 42-6208. Exempt government property improvements

9 The tax under this article does not apply with respect to:

10 1. Property that is used for a governmental activity.

11 2. Property that is used for public housing.

12 3. Easements and rights-of-way of railroads and gas, electric, water,  
13 pipeline and telephone utilities.

14 4. Interests in all or any part of a facility that is owned of record  
15 by a government lessor and used primarily for athletic, recreational,  
16 entertainment, artistic, cultural or convention activities if the interest is  
17 used for those activities or activities directly related and incidental to  
18 these uses including concession stands.

19 5. Property that is located on municipal airports and airports that  
20 operate pursuant to sections 28-8423, 28-8424 and 28-8425, if the property is  
21 used for or in connection with aviation, including hangars, tie-downs,  
22 aircraft maintenance, sale of aviation related items, charter and rental  
23 activities, commercial aircraft terminal franchises, parking facilities and  
24 restaurants, stores and other services that are located in a terminal.

25 6. The use by a commercial airline of the runways and terminal  
26 facilities of state, city, town or county airports and public airports  
27 operating pursuant to sections 28-8423, 28-8424 and 28-8425.

28 7. Leases of property or interests in a transportation facility that  
29 is constructed or operated pursuant to title 28, chapter 22, ~~article 1 or 2.~~

30 8. Interests in property held in trust for an Indian or an Indian  
31 tribe by the United States government.

32 9. Interests in property that is defined as "contractor-acquired  
33 property" or "government-furnished property" in the federal acquisition  
34 regulations (48 Code of Federal Regulations section 45.101) and that is owned  
35 by the government and used to perform a government contract.

36 10. Property of a corporation that is organized by or at the direction  
37 of a county, city or town to develop, construct, improve, repair, replace or  
38 own any property, improvement, building or other facility to be used for  
39 public purposes that the county, city or town pledges to lease or  
40 lease-purchase with county or municipal special or general revenues.

41 11. Interests in property used by a chamber of commerce recognized  
42 under section 501(c)(6) of the United States internal revenue code if the  
43 property is used predominately for those federal tax exempt purposes.

44 12. Interests in property used by organizations that are exempt from  
45 taxation under section 501(c)(3) of the internal revenue code.

1           13. Interests in parking garages or decks if the parking garages or  
2 decks are owned and operated by a government lessor or operated on behalf of  
3 a government lessor, by an entity other than the prime lessee, pursuant to a  
4 management agreement with the government lessor.

5           14. Residential rentals if the prime lessee is the occupant.

6           Sec. 6. Requirements for enactment: two-thirds vote

7           Pursuant to article IX, section 22, Constitution of Arizona, this act  
8 is effective only on the affirmative vote of at least two-thirds of the  
9 members of each house of the legislature and is effective immediately on the  
10 signature of the governor or, if the governor vetoes this act, on the  
11 subsequent affirmative vote of at least three-fourths of the members of each  
12 house of the legislature.